IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 991 of 1988

For Approval and Signature:

HON'BLE MR. JUSTICE M. S. SHAH

HON'BLE MR. JUSTICE BANKIM. N. MEHTA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any order made thereunder ?	No
5	Whether it is to be circulated to the civil judge ?	No

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STATE OF GUJARAT - Petitioner(s)

Versus

M/S. K.L.PATEL, i.e. KANTIBHAI LALUBHAI PATEL, CONTRACTOR, - Respondent(s)

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Appearance :
MR AJ DESAI, AGP for Petitioner No(s).: 1.
MS MAYA N BHAVNANI for Respondent No(s).: 1.
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CORAM :HON'BLE MR. JUSTICE M. S. SHAH
MR. JUSTICE BANKIM .N. MEHTA

Date : 15/06/2005

ORAL JUDGMENT : **(Per : HON'BLE MR.JUSTICE M.S.SHAH)**

This revision application has been placed before us pursuant to the order of reference made by a learned Single Judge of this Court on 19.3.1994 on the basis that conflicting views were expressed by the two learned Single Judges of this Court – one view was expressed by Justice SH Sheth in the judgment 16.9.1970 in Civil Revision Application No. 470 of 1968 and the other view was expressed by Justice SD Dave in the judgment dated 18.9.1992 in Civil Revision Application No. 1176 of 1986 and other allied matters.

2. Before narrating the aforesaid views, it is necessary to set out the facts of the present revision application.

Respondent herein, M/s K.L. Patel, i.e. Kantibhai Lalubhai Patel, is a registered partnership firm (hereinafter referred to as "the plaintiff") which had entered into a contract with the State of Gujarat for construction of a road. The plaintiff filed Special Civil Suit No. 231 of 1979 in the Court of the learned Civil Judge (SD), Nadiad, against the State of Gujarat for recovering the following amounts :-

A	Rs.35,000/-	Amount of security deposit either paid initially in cash by the plaintiff or deducted from R.A. Bills.
B	Rs.75,000/-	Loss of profit on the remaining work of Rs.3.00 lacs after 31.3.76.
C	Rs.60,000/-	On account of enhanced rate for the work executed during extended period from 1.3.74 to 31.3.76.

The plaintiff valued the suit for an aggregate amount of Rs.1,70,000/- and paid court fee stamp on that basis. The court Fee Inspector filed Court Fee Reference No. 1 of 1987 under Section 12(3) of the Bombay Court Fees Act, 1959 (hereinafter referred to as "the Court Fees Act") mentioning that the plaintiff was required to pay the court fee stamp on each claim A, B and C separately. After hearing the plaintiff and the Court Fee Inspector, the learned trial Judge rejected the reference vide his order dated 12.1.1988.

Being aggrieved by the said order, the State of Gujarat filed the present revision application.

3. When the matter reached hearing before the learned Single Judge on 19.3.1994, it appears that the petitioner-State of Gujarat relied on the judgment dated 16.9.1970 of Justice SH Sheth in Civil Revision Application No. 470 of 1968 in support of its contention that the plaintiff was required to pay court fee stamp on each of the aforesaid claims separately, because the suit was filed for three different subjects and even if the suit is based on one contract, there may be more than one subjects in the same suit.

On the other hand, the plaintiff appears to have relied on the decision dated 18.9.1992 of Justice SD Dave in Civil Revision

Application No. 1176 of 1986 and other allied matters in support of the contention that there was only one contract and only one cause of action giving rise to the aforesaid three claims and, therefore, the suit was not for three distinct subjects, but on the same subject and, therefore, the three claims were not required to be valued separately, but they were rightly aggregated by the plaintiff for paying the court fee stamp on the total suit claim of Rs.1,70,000/-.

The learned Single Judge was of the prima facie view that the view taken by Justice SD Dave in the aforesaid judgment was contrary to the view taken by Justice SH Sheth, particularly contrary to the following observations made by Justice SH Sheth in the aforesaid decision dated 16.9.1970 :-

> "It may be that two or more distinct subjects may form the subject matter of a single decree. Two or more distinct subjects may also arise out of the same contract."

The matter was accordingly referred to the Larger Bench and pursuant to the order passed by the Hon'ble the Chief Justice, the mater is now placed before us.

4. Mr AJ Desai, learned AGP has contended that as per the decision

of Justice SH Sheth, there may be two or more distinct subjects arising out of the same contract and, therefore, the plaintiff in the present case (the respondent herein) having claimed amounts from the defendant under three different heads, they must be treated as three distinct subjects being (a) refund of security deposit, (b) loss of profit of the remaining work after termination of the contract and (c) the claim on account of enhanced rate for the work executed during the extended period. It is submitted by the learned AGP that the nature of evidence was also different for the three different subjects and different legal provisions would be required to be applied for adjudication of the three different claims and, therefore, all the three claims ought to be treated as three distinct subjects as contemplated by the provisions of Section 18 of the Bombay Court Fees Act, 1959.

5. On the other hand, Mr Dayani, learned counsel for the respondent-plaintiff has submitted that all the three claims arise from the same contract and from the same cause of action, viz. the wrongful termination of contract by the Government. It is further submitted that in the judgment rendered by Justice SH Sheth also it is held that a "subject" means the same thing as a "cause of action".

6. Before dealing with the rival submissions, it is necessary to refer

to the provisions of Section 18 of the Bombay Court Fees Act, 1959 which read as under :-

> "**18. Multifarious suits**.- Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.
>
> Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, 1908 (V of 1908), Schedule I, Order II, rule 6."

Order II, Rules 3 and 6 of the Code of Civil Procedure read as under :-

> "**3. Joinder of causes of action.**- (1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendant jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.
>
> (2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.
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> **6. Power of court to order separate trials.**- Where it appears to the Court that the joinder of causes of action in one suit may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient in the interests of

justice."

The questions arising for our consideration are -

(i) whether the suit in the instant case embraces two or more distinct subjects

(ii) Whether there is any conflict between the views expressed by Justice SH Sheth and Justice SD Dave in the aforesaid judgments and,

(iii) if yes, which is the correct view ?

7. The dictionary meaning of word "subject" in the Concise Oxford Dictionary is as under :-

> "The substance of substratum of anything as opposed to its attributes; theme or matter (to be) treated of or dealt with."

In the Chambers' English Dictionary, the word "subject" is defined as under :-

(i) that which is treated or handled.

(ii) matter or materials.

The Legislature has used the expression "two or more **distinct** subjects" and not merely "two or more subjects".

8. The scheme of the relevant provisions of the Civil Procedure Code dealing with joinder of parties and causes of action was admirably analyzed by a Full Bench of the Madras High Court in **D Laxminarayana Chettiar & Anr., (1954) ILR 289**. Subba Rao, J. speaking for the Full Bench analyzed the provisions of Order I and II of CPC dealing with such joinder of parties and causes of action in the following words :-

> "Orders I and II of the Civil Procedure Code provide for the joinder of parties and causes of action for convenience of satisfactory disposal. Under Order II, rule 3, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly' and two or more plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit. Ordinarily every cause of action must be a basis for a single suit. But by reason of the aforesaid rules, subject to the provisions mentioned therein, several causes of action may be united in one action. To illustrate, if a defendant executed two promissory notes in favour of a plaintiff, one suit can be instituted for recovery of the amounts due under the two promissory notes. So too, if several defendants jointly borrow money on different promissory notes from a plaintiff, he can file one suit for recovery of the amounts due to him from all the defendants jointly. In the same manner, if the plaintiffs are joint promisees in respect of different promissory notes from the same defendant singly or same defendants jointly, one suit could be filed."

After referring to the provisions of Order I, Rules 1 and 3, the Full Bench held that under the aforesaid two rules, several plaintiffs or defendants may be added as parties to a suit if the right to relief arises for or against them out of the same act or transaction and there is a common question of law or fact. The said two Rules are wider in scope than Order II, Rule 3. Even if the plaintiff or the plaintiffs are not jointly interested in several causes of action against the defendant or defendants, the several causes of action can be united in one suit if they arise out of the same act or transaction and give rise to a common question of law or fact. ... ... Under the provisions of the Civil Procedure Code, a suit would relate to enforce the claim or claims arising out of the same cause of action. But the Legislature intended to provide a machinery for the quick and satisfactory disposal of disputes arising between the same parties provided such disposal can be conveniently effected without causing confusion in the trial of the suit. With this object, Order II, rule 3 and Order I, rules 1 and 3 were enacted. Originally, under the old Code, sections 26 and 28 corresponding to Order I, rule 1, and Order I, rule 3, were confined only to reliefs arising out of the same cause of action, and section 45 corresponding to Order II, rule 3, was confined to joinder of causes of action. But Act V of 1908 so enlarged the scope of Order I, rule 1, as to

take in reliefs arising even out of different causes of action. The result is that the scope of Order I, rule 3, is now wider than that of Order II, rule 3. At the same time Order I, rule 2, enables that any joinder of plaintiffs may embarrass or delay the trial of the suit. So too, Order II, rule 6, empowers the Court to order separate trials if the causes of action cannot be conveniently tried or disposed of together. It will be seen from the aforesaid provisions that the ordinary rule is that one suit should be filed in respect of one cause of action but under certain circumstances strictly circumscribed by the Act, clubbing of two or more causes of action is allowed. The jurisdiction of the Court in respect of such consolidated suits is governed by Order II, rule 3(2), whereunder :

> "Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit."

But there is no indication in the Civil Procedure Code that the Legislature intended that the Government should forgo court-fee if the plaintiff took advantage of the enabling provisions. There is also no reason why the court-fee should be reduced or given up by the Government when a plaintiff seeks and gets the same reliefs in one suit

which, but for the enabling provisions, he could have got only by filing separate suits. Section 17 of the Court Fees Act, 1870 is designedly enacted to prevent such evasion of court-fee. If the words "distinct subjects" are understood to mean distinct causes of action, the result would be that, though for convenience one suit is allowed to be filed in respect of separate causes of action, for the purpose of court-fee they should be treated as distinct subjects' otherwise no intelligible explanation can be offered for the enactment of section 17 of the Court Fees Act, 1870.

9. Section 18 of the Bombay Court Fees Act, 1959 is in pari materia with Section 17 of the Court Fees Act, 1870, which is a Central legislation. After an analysis of the relevant provisions of the Court Fees Act, 1870 and the relevant provisions of the Code of Civil Procedure and after a review of several decisions, the Full Bench of the Madras High Court ultimately concluded that Section 17 of the Court Fees Act, 1870 is intended to prescribe court fee on consolidated plaint uniting distinct causes of action in respect whereof the plaintiff, if he chose, could file separate suits. The Full Bench held that the ordinary rule is that one suit should be filed in respect of one cause of action but under certain circumstances strictly circumscribed by the Civil Procedure Code, clubbing of two or more causes of action is allowed.

The plaint shall contain, among others, the cause of action, the relief and the valuations of the subject matter for the purposes of jurisdiction and court fee. A cause of action is a bundle of essential facts which it is necessary for the plaintiff to prove before he can succeed in the suit. A Court is called upon to decide the existence of those facts and the legal consequences following therefrom for giving the relief claimed by the plaintiff. Other questions relating to court fee and jurisdiction are in essence extraneous to the main and substantial controversy between the parties, though they may depend upon it. The controversy relating to the said bundle of essential facts constituting the cause of action can legitimately be called "the subject of the suit", for the granting or refusing of the relief claimed would depend upon the decision on the said controversy. After referring to dictionary meanings of the word "subject" in the Concise Oxford Dictionary and the Chambers' English Dictionary, quoted hereinabove, the Full Bench held that the above interpretation will not do violence to the language used in the section.

10. We are in respectful agreement with the ratio laid down by the Full Bench of the Madras High Court in the aforesaid decision.

11. Turning to the facts of the case in Civil Revision Application No. 470 of 1968 decided by Justice SH Sheth, the plaintiff therein, who was

also a contractor, filed a suit for damages arising out of breach of contract and claimed from the defendants a sum of Rs.1,57,000/-. This claim was decreed to the extent of Rs.1,31,000/- and the rest of the claim of the plaintiff was dismissed. In that suit, the defendants filed a counter claim alleging that the plaintiff had committed a breach of contract and claimed from the plaintiff a sum of Rs.4,11,000/-. The trial Court allowed the counter claim to the extent of Rs.13,000/- and rejected the rest of the defendants' counter claim. The trial Court while passing the decree deducted the amount of Rs.13,000/- from the amount of Rs.1,31,000/- and passed a net decree for Rs.1,18,000/- in favour of the plaintiff and against the defendants. Against that decree, the defendants filed First Appeal before the High Court. In that appeal, the defendants challenged two parts of the same decree –

(i) that part of the decree by which the trial Court had decreed a sum of Rs.1,18,000/- in favour of the plaintiff, and

(ii) that part of the decree by which the counter claim of defendants was dismissed to the extent of Rs.3,98,000/-.

Their total claim in that appeal was, therefore, Rs.5,16,000/-for which they paid the court fee stamp. On account of the objection raised by the Registry, which was disputed by the appellant-defendants, the

matter was referred to the Taxing Officer who upheld the objection raised by the Registry and directed the appellants to pay the court fee stamp separately on the aforesaid two items of the aggregate claim in that appeal. Aggrieved by the aforesaid order, the appellants filed a civil revision application which reached hearing before Justice SH Sheth. Relying on the aforesaid judgment of the Full Bench of the Madras High Court, Justice SH Sheth held that the expression "distinct subjects" in Section 18 of the Bombay Court Fees Act, 1959 means "distinct causes of action", though under the enabling provisions of the Code of Civil Procedure they may be clubbed together in a single suit. The learned Single Judge further proceeded to observe that in the case before His Lordship, the plaintiff had alleged one set of circumstances against the defendants to claim damages from them. In the counter claim, the defendants had alleged another set of circumstances against the plaintiff to claim damages from the plaintiff. These two sets of circumstances alleged against each other by rival parties to the suit cannot be the same and they were bound to be distinct. Hence, one set of circumstances giving rise to the cause of action for the plaintiff was distinct from the another set of circumstances giving rise to the different cause of action for the defendants. The learned Single Judge, therefore, held that for the plaintiff and for the defendants, there were different causes of action which constituted "distinct subjects". The

aforesaid expression used in Section 18 suggests that the defendants could have instituted independent appeals in respect of their claims. If they could have instituted independent actions but if they did not do so on account of some other provisions contained in some other law, the Court fee which they were required to pay under Section 18 must be on the basis as if two independent appeals were instituted by the party instead of one.

12. We are in respectful agreement with the aforesaid view taken by Justice SH Sheth. In the case before His Lordship there were different causes of action – one in favour of the plaintiff and the other in favour of the defendants. In the instant case, however, the plaintiff has filed one suit on the same cause of action alleging breach of contract on the part of the defendants entitling the plaintiff to claim refund of the security deposit, loss of profit for the work left incomplete on account of termination of contract and enhanced rate for the work done during the extended period of contract. As per the interpretation placed by the Full Bench of the Madras High Court on pari materia provisions of Section 17 of the Court Fees Act, 1870 which Justice SH Sheth followed and with which interpretation we are in respectful agreement, the plaintiff had made all the three claims arising from the same cause of action and, therefore, the plaintiff was justified in aggregating the three claims

for paying the court fee on the total claim of Rs.1,70,000/-. Since the plaintiff prayed for three claims arising from the breach of the same contract, he could not have filed three separate suits.

13. We find that the same reasoning was adopted by Justice SD Dave while rendering decision dated 18.9.1992 in Civil Revision Application No. 1176 of 198. In the revision applications before His Lordship, the Government contended that the plaintiff-contractor in the concerned suit had made claim sub-divided into 17 heads. Nonetheless the suit filed by the plaintiff was for recovering the amounts arising from the same contract and the same cause of action. The facts in all the four revision applications were more or less the same and we find that His Lordship Justice SD Dave also applied the correct test that "distinct subjects" in Section 18 of the Bombay Court Fees Act, 1959 would mean "distinct causes of action". We, therefore, do not find any conflict between the views expressed by the two learned Single Judges of this Court.

14. However, in view of the doubt expressed by the learned Single Judge who made the order of reference on 19.3.1994, we may add a few more words.

The learned Single Judge in the order of reference found that the view taken by Justice SD Dave was prima facie contrary to the following observations made by Justice Sheth :-

> "It may be that two or more distinct subjects may form the subject matter of a single decree. Two or more distinct subjects may also arise out of the same contract."

As already indicated earlier, in the facts of the case before His Lordship, Justice Sheth took the view that although the suit arose out of the same contract, there was one cause of action pleaded by the plaintiff and a distinct cause of action pleaded by the defendants and, therefore, there were two distinct causes of action i.e. two distinct subjects arising out of the same contract. It is clear that Justice Sheth adopted the reasoning which appealed to the Full Bench of the Madras High Court and with which we are in respectful agreement. Nowhere in the judgment of Justice Sheth any observation is made to the effect that "distinct subjects" would mean "different claims" or "different heads of claim". All that Justice Sheth had stated in the judgment with full emphasis was that "subject" would mean "a cause of action" but not necessarily the same contract because on account of disputes arising from the same contract, the two contracting parties may plead separate

causes of action for their rival claims.

15. The view taken by Justice SD Dave in the judgment dated 18.9.1992 is in no way contrary to the view taken by Justice Sheth because in the judgment of Justice SD Dave also it is repeatedly stated while dealing with each Civil Revision Application that the plaintiff in each of the four cases had filed the suit arising from one and the same contract and there was only one cause of action and that merely because the plaintiff had made his claim under 14 or 17 different heads, it did not mean that there were 14 or 17 different subjects. As would be apparent, in none of the cases before Justice SD Dave, the defendants had filed any counter claim and the Court was not required to adjudicate in any of the four cases before Justice SD Dave, two distinct causes of action – one pleaded by the plaintiff and the other pleaded by the defendants. Admittedly there was no counter claim in any of the four suits.

16. For the foregoing reasons, we dismiss this Civil Revision Application after holding that the expression “distinct subjects' in Section 18 of the Bombay Court Fees Act, 1959 means “distinct causes of action” for which the plaintiff could have filed separate suits, but for the enabling provisions of the Code of Civil Procedure or any other law

which may be applicable to the facts of the case and we further hold that there is no conflict between the view taken by Justice SH Sheth in the judgment dated 16.9.1970 in Civil Revision Application No. 470 of 1968 and the view taken by Justice SD Dave in the judgment dated 18.9.1992 in Civil Revision Application No. 1176 of 1986 and other allied matters.

The revision application is accordingly dismissed.

Rule is discharged.

[M.S. SHAH, J.] **[BANKIM N. MEHTA, J.]**

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